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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 11/19/2003

20

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/784,292

Applicant(s)

FLETCHER ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8-18-03 has been entered.

Specification

Drawings

2. The drawings were received on 08-18-03. These drawings are not approved by the Examiner. The proposed Figure 8 does not show a seam but rather what appears to be a perforated line. Also, Figure 8 does not show such in each panel.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the seam in each panel as claimed in claim 39 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims now require side panels having a waist edge which is nonparallel with the leg edge. While page 29, lines 9-19 and Figure 4 show a side panel which has a waist edge, a leg edge, two end edges, a exterior surface bounded by the edges and an interior surface bounded by the edges wherein the waist edge is linear and the leg edge is curved at a portion and linear at a portion, i.e. the edges are not parallel, as one views the panel in the direction of either the exterior or interior surface, where is the support for the invention as claimed, i.e. as claimed edges can both be curved or the waist edge can be curved while the leg edge is linear, the edges could be nonparallel as viewed from above the waist edge but not from the direction of the

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exterior or interior surface? If Applicants traverse this rejection the specific portion of the specification relied on to support the entire scope of the claim language should be set forth.

Claim Language Interpretation

6. As discussed supra, the claim language “each having a waist edge nonparallel with a leg edge” has not been specifically described. Therefore such will be given its broadest common meaning, e.g. the edges could both be curved or one curved and one linear as long as they are nonparallel in at least one of the x, y, or z directions along at least a portion thereof.

Claim Rejections - 35 USC § 102

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1-2, 5-12, 14-21, 23, 25, 27, 29, 30, 34, and 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuen '162.

Claim 1: see Figures, chassis is 22, col. 3, lines 31-38, side panels are 40, col. 4, lines 16-19, fastening components are 56, col. 5, lines 55-56, mating fastening components are 42, 44, col. 4, lines 16-19, and the dimensions are disclosed at col. 3, line 68- col. 4, line 3 and col. 5, lines 57-61, i.e. straps which are 3 inches wide are about 33% of a shell which is 10 inches long, i.e. at least 20% as claimed. Also note Figures 1, 3 and 4 which show the straps 40 as having a substantially constant width dimension therealong, i.e. the length dimension as claimed is

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constant. Each panel 40 has waist and leg edges which are both linear, i.e. parallel, see Figure 3 at 50, and nonparallel, see portion 48 in Figure 3.

Claim 2: see col. 4, lines 19-21 and col. 5, lines 55-56.

Claim 5: see page 31, lines 6-7 of the instant specification, i.e. "Material ... renders ... suitable...wipes", in other words a material capable of use as a wipe. As defined by the American Heritage Dictionary, "wipe" is "To subject to light rubbing or friction, as of a cloth or paper, in order to clean or dry". In other words a cloth or paper is deemed a material or structure capable of use as a wipe. See col. 10, line 50-col. 11, line 52 of Kuen which discloses cloth side panels. Thus, since Kuen includes the structure of a cloth, that structure is also deemed inherently capable of the same function or capability as that of the claimed structure, see MPEP 2112.01.

Claim 6: see col. 4, lines 7-10.

Claim 7: see col. 5, lines 38-48.

Claim 8: see col. 5, lines 57-59.

Claim 9: see col. 4, line 7(note "may" inherently includes "may not"), and col. 5, lines 38-48.

Claims 10-11: see col. 3, lines 23-24.

Claim 12: Applicant's claim the side panels comprise a "durable" material, i.e. the side panel material has the function, capability or property of multiple reuse. Note page 3, lines 1-2, page 7, lines 11-16, the paragraph bridging pages 30-31 and page 39, lines 16-

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20 of the instant specification, i.e. side panels of elastomeric components such as laminates of '220 are reusable, i.e. "durable". See col. 1, lines 11-26, col. 10, line 50-col. 11, line 11 of Kuen '162, i.e. the attachment system for use with disposable articles as well as reusable articles, i.e. underwear, bathing suits, includes side panels of elastomeric components such as laminates of '220, i.e. Kuen includes elastic panels of the same material as those disclosed by Applicants. Therefore, there is sufficient factual evidence for one to conclude that the functions, capabilities and properties of such disclosed side panels would also be inherent in the similarly structured side panels of Kuen, i.e. the panels of Kuen are "durable". See MPEP 2112.01.

Claims 14-16: see discussion of claims 7-8 supra or col. 10, line 57-col. 11, line 13.

Claims 17-20: see col. 1, lines 11-20 and col. 3, lines 23-30.

Claims 21, 23, 25, 27, 29, 34, 36-38: see discussion of claims 1-2, 5-11, and 14-20 supra. Additionally see col. 4, line 55-col. 5, line 31, i.e. "preferably" does not require the preferred structure, i.e. desirably though not necessarily, i.e. the pads 42, 44 do not have to be spaced from the ends. Thus, the seams formed by the hook and loop fasteners can run from the waist opening to the leg openings.

Claim 30: see col. 5, lines 31-33.

Claim 39: see col. 6, line 38-col. 7, line 6, i.e. bonds form tearable, non-refastenable seams.

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Claim Rejections - 35 USC § 103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 13, 31-33 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162 in view of Yeo and Wallach.

Applicants claim flushability of at least one of or all of the cover, liner and absorbent of the chassis. Kuen teaches a disposable undergarment 20 including a cover, liner and absorbent and the desire for economic efficiency, see col. 3, lines 33-38 and col.9, lines 1-4 and 8-9, but not flushability of the cover, liner and absorbent. However, see col. 1, lines 16-23 and 29-40, col. 5, lines 27-29 and 49-52 and col. 22, Example 17, and col. 23, Examples 22-25 of Yeo and col. 1, lines 13-17 and 39-43, col. 2, lines 4-6 and col. 4, lines 21-25 of Wallach. To employ flushable components for at least one, if not all, of the cover, liner and absorbent of the Kuen disposable device as taught by Yeo and Wallach would be obvious to one of ordinary skill in the art in view of the recognition that such would provide more economic but environment disposability and the desirability of disposability and economic efficiency by Kuen.

11. Claims 3 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162 in view of Kuen '789.

Applicants claim the components of the fasteners on the side panels of loop material and the components of the fasteners on the front and back panels of the chassis being hook material whereas Kuen '162 teaches the opposite. However see Kuen '789, col. 3, line 65-col. 4, line 4,

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col. 5, lines 66-68, col. 9, lines 58-61. To reverse the components of Kuen '162 such that the side panel fastener components are loop material while the chassis fastener components are hook material instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Kuen '789.

12. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162 in view of LaFortuna.

Applicant claims the fastening components of the side panels include two hook and two loop material components and the mating fastening components of the chassis include two loop and two hook material components, respectively, whereas Kuen teaches that the fastening components are all hook material and the mating fastening components are all loop material. However see LaFortuna, col. 8, lines 31-37 and col. 7, line 61-col. 8, line 14, i.e. the surfaces of the components that interlock with each other can be either hook or loop material as long as they lock with each other. To make the hook fastening components and loop mating fastening components of Kuen '162 fastening components including two hook and two loop material components and the mating fastening components including two loop and two hook material components, respectively, instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by LaFortuna.

13. Claims 22, 24, 26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162 in view of Ygge et al.

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Applicant claims the fastening material of the chassis being on the inner surface thereof while the mating fastening material of the side panel is on the outer surface thereof which is the opposite of what Kuen teaches. See Figures 1-7 and col. 5, lines 20-27 of Ygge. To make the chassis outside fasteners and the inside side panel mating fasteners of Kuen chassis inside fasteners and side panel outside mating fasteners instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Ygge et al.

Response to Arguments

14. Applicants remarks on pages 9 with regard to the amendments and drawings have been noted. See discussion in paragraphs 2-3 and 5 supra. Applicants remarks on pages 11-12 with respect to the 103 rejection based on Bolick are deemed moot in that such rejection was not reraised. The remainder of the arguments with regard to the rejections based on Kuen have been considered but are deemed nonpersuasive in that such arguments are narrower than the claim language, i.e. see Claim Language Interpretation section supra and compare edges of portions 50 and 48 in Figure 3 of Kuen '162 to each other.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. In addition to Kuepper, see portions cited in the last Office Action, see Sageser et al at col. 9, lines 16-35 and Breummer, Figures 4-6, and col. 5, lines 59-63 of Kuen '162.


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16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617.

The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
November 12, 2003